APPENDIX A — AMENDED ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT FILED FEBRUARY 3, 2004

UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit

No. 03-5134

September Term, 2003
99cv02086

Wagner D. Jackson, Jr.,

Appellant

v.

Department of Justice, U.S., et al.,

Appellees

BEFORE: Edwards, Sentelle, and Rogers, Circuit Judges

AMENDED ORDER

Upon consideration of the motion for summary affirmance, the opposition thereto, and the reply, it is

ORDERED that the motion for summary affirmance be granted: The merits of the parties' positions are so clear as to warrant summary action. *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). Appellant Wagner D. Jackson, a Native American/African

Appendix A

American male, instituted this lawsuit against his former employer, the U.S. Department of Justice (DOJ), alleging race discrimination in hiring in violation of Title VII. In his complaint, Jackson asserted that despite his qualifications, the DOJ failed to hire him, because of his race, for one of three vacant attorney positions. Jackson cannot prevail, however, because he has not shown that the DOJ's legitimate, non-discriminatory reason for failing to hire him – that is, the other applicants were more qualified – was a pretext for discrimination. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05 (1973); *Morgan v. Federal Home Loan Mortg. Corp.*, 328 F.3d 647, 651 (D.C. Cir. 2003). This court, thus, has no occasion to rely on *Robinson v. Adams*, 847 F.2d 1315 (9th Cir. 1987).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: s/ Michael C. McGrail
Michael C. McGrail
Deputy Clerk/LD

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT FILED SEPTEMBER 29, 2003

UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit

No. 03-5134

September Term, 2003
99cv02086

Wagner D. Jackson, Jr.,

Appellant

v.

Department of Justice, U.S., et al.,

Appellees

BEFORE: Edwards, Sentelle, and Rogers, Circuit Judges

ORDER

Upon consideration of the motion for summary affirmance, the opposition thereto, and the reply, it is

ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. *Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). Appellant Wagner D. Jackson, a Native American/African American

male, instituted this lawsuit against his former employer, the U.S. Department of Justice (DOJ), alleging race discrimination in hiring in violation of Title VII. In his complaint, Jackson asserted that despite his qualifications, the DOJ failed to hire him, because of his race, for one of three vacant attorney positions. The record, however, contains no evidence that the individuals who made the hiring determinations knew of Jackson's race. *Robinson v. Adams*, 847 F.2d 1315, 1316 (9th Cir. 1987) ("An employer cannot intentionally discriminate against a job applicant based on race unless the employer knows the applicant's race."). Thus, Jackson can not show unlawful discrimination by the DOJ. Even assuming Jackson could prove that the DOJ knew his race, he still would not prevail because he has not shown that the DOJ's legitimate, non-discriminatory reason for failing to hire him -- that is, the other applicants were more qualified -- was a pretext for discrimination. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-05 (1973); *Morgan v. Federal Home Loan Mortg. Corp.*, 328 F.3d 647, 651 (D.C. Cir. 2003).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

s/ [illegible]

APPENDIX C — DECISION AND ORDER, AND JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA DATED AND FILED MAY 6, 2003

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

C.A. No. 99-2086 (TPJ)

WAGNER D. JACKSON, JR.,

Plaintiff,

v.

U.S. DEPARTMENT OF JUSTICE and
JOHN D. ASHCROFT, ATTORNEY GENERAL,

Defendants.

DECISION AND ORDER

Plaintiff Wagner Jackson, an attorney with the U.S. Department of Justice ("DOJ"), was one of several thousand lawyers who applied for one of several open positions elsewhere in the DOJ in the summer of 1994. His application was summarily rejected in January, 1995, along with most of the others, without an interview. He claims in this action to be a Native American/African American and his ethnicity to be the reason he was not offered one of the jobs. Defendants DOJ and the Attorney General deny the discrimination alleged, assert that other applicants were better qualified for the positions on the basis of their records alone, and, most significantly, that they were altogether unaware of plaintiff's ethnicity when his application was reviewed.

Appendix C

Plaintiffs claim of discrimination has likewise been rejected administratively within DOJ, and by the EEOC. Hence this *pro se* lawsuit. The parties have been given full opportunity to make an evidentiary record before the Court, and the case is now presented on cross-motions for summary judgment.

Assuming *arguendo* that plaintiff is what he claims to be, i.e., Native American/African American, and that he was, in fact, qualified for the positions for which he applied-matters as to which the Court makes no finding – the record is devoid of any evidence that anyone who considered his application at DOJ knew of his ethnicity at the time, or thereafter. No discrimination can be found in the absence of evidence that an alleged discriminator knew of a reason to discriminate.

It is, therefore, this 6th of May, 2003,

ORDERED, that defendants' renewed motion for summary judgment [39] is granted; and it is

FURTHER ORDERED, that plaintiff's cross-motion for summary judgment [40] is denied; and it is

FURTHER ORDERED, that the Clerk enter judgment for defendants and dismiss the complaint with prejudice.

s/ Thomas Penfield Jackson
Thomas Penfield Jackson
U.S. District Judge

Appendix C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 99-2086

WAGNER D. JACKSON, JR.,

Plaintiff(s)

v.

U.S. DEPARTMENT OF JUSTICE and
JOHN D. ASHCROFT, ATTORNEY GENERAL,

Defendant(s)

JUDGMENT
For Defendant

This cause having been considered by the Court on defendants motion for summary judgment, before the Honorable Thomas Penfield Jackson, Judge presiding, and the issues having been duly briefed by all parties, and the court having rendered its decision granting defendants motion, now therefore, pursuant to the decision of the Court,

IT IS ORDERED, ADJUDGED AND DECREED that the plaintiff WAGNER D. JACKSON, JR. take nothing on the complaint against the defendant U.S. DEPARTMENT OF JUSTICE and JOHN D. ASHCROFT, ATTORNEY GENERAL and that the said defendant have and recover costs from the said plaintiff.

Appendix C

NANCY MAYER-WHITTINGTON, Clerk

By: s/ Robert E. West
Robert E. West, Deputy Clerk

Dated: 5-6-03

APPENDIX D — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT DENYING PETITION FOR REHEARING FILED FEBRUARY 3, 2004

UNITED STATES COURT OF APPEALS
For The District of Columbia Circuit

No. 03-5134

September Term, 2003
99cv02086

Wagner D. Jackson, Jr.,

Appellant

v.

Department of Justice, U.S., et al.,

Appellees

BEFORE: Ginsburg, Chief Judge, and Edwards, Sentelle, Henderson, Randolph, Rogers, Tatel, Garland,* and Roberts, Circuit Judges

ORDER

Upon consideration of appellant's petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

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* Circuit Judge Garland did not participate in this matter.

Appendix D

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: s/ Michael C. McGrail
Michael C. McGrail
Deputy Clerk/LD